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Nutrishare, Inc.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Nutrishare, Inc., a California corporation,
Plaintiff,
v.
BioRx, LLC, an Ohio Limited Liability
Company,
Defendant.

Case No. 2:08-CV-01252-WBS-EFB

DECLARATION OF KATHRYN BUNDY

Date: August 11, 2008
Time: 2:00 p.m.
Dept: Courtroom 5
Judge: Hon. William B. Schubb

I, KATHRYN BUNDY, hereby declare as follows:

1. I am an individual residing in Los Angeles, California. I make this declaration of my own personal knowledge, and if called to testify, could and would testify consistent with the facts stated herein.

2. I suffer from Crohn's disease and require total parenteral nutrition ("TPN") in order to receive adequate nutrition.

3. In approximately May, 2008, I called NutriThrive's toll-free number listed on www.nutrithrive.com about three to four times to inquire about NutriThrive's products and services. Because I am a performer in Hollywood and wanted my condition to remain private at the time, I used a pseudonym. The first time I called NutriThrive, I reached BioRx's hemophilia pharmacist because I called after hours. The second and third time I called NutriThrive, I spoke

1 with NutriThrive's head TPN pharmacist Kathleen. I told Kathleen that I was interested in
2 NutriThrive's services, but was concerned that NutriThrive was based in Ohio. Kathleen
3 responded that NutriThrive works with patients in California, would send one of its nurses to
4 California to help me get started on TPN, and would subsequently have a local nurse from one of
5 the several agencies in the area assist me with TPN. Kathleen said that NutriThrive has
6 relationships with several nursing agencies in California. I also asked if NutriThrive was
7 accredited by the American Commission on Healthcare (ACHC), to which Kathleen responded
8 "yes." Kathleen subsequently sent me a "start-up" packet, which included a thick binder
9 containing NutriThrive's promotional materials and her business card. Attached hereto as Exhibit
10 A are true and correct copies of portions of the "start-up" packet that NutriThrive mailed to me.
11 Ultimately, I decided not to use NutriThrive's products and services, so I left Kathleen a final
12 voicemail letting her know about my decision.

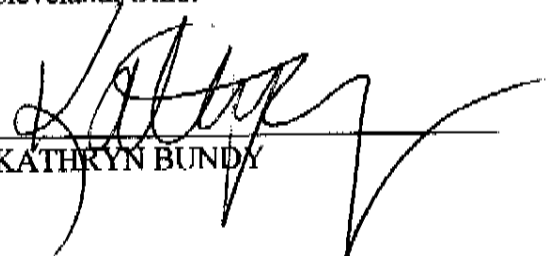
13 4. Between June 26 and June 29 of this year, I attended the Oley Conference in San
14 Diego. This conference is a consumer-focused educational conference held every year in a
15 different location. The first thing I noticed at the conference this year was that NutriThrive's
16 name was almost everywhere. I don't remember the Oley Foundation playing favorites in the
17 past like it did with NutriThrive this year. For example, there were signs all over the buffet tables
18 on the first full day of the conference indicating that lunch was sponsored by NutriThrive. I
19 really felt that this compromised the integrity of the conference, which should be all about the
20 consumer and not the company.

21 5. Another incident that bothered me happened on the Sunday of the conference.
22 After the picnic lunch, while I was lounging at the pool with a few other TPN consumers whom I
23 had befriended during the conference, I was approached by a woman I didn't know. I don't
24 remember her name, but she sat down next to me and started asking me questions about myself.
25 As the discussion continued, she seemed to be pumping me for more information and I started to
26 feel uncomfortable – like I was being courted or wooed. I asked the woman if she was a TPN
27 consumer, and she responded that her daughter was a TPN consumer, and when I asked her who
28 her TPN provider is, she said she uses NutriThrive, and finally revealed to me that actually, she

1 works for NutriThrive. It was inappropriate, and actually against the rules of the conference, for
2 NutriThrive to be soliciting me in that manner.

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4 I declare under penalty of perjury under the laws of the United States and the State of
5 California that the foregoing is true and correct to the best of my knowledge.

6 Dated this 25th day of July, 2008, in Cleveland, Ohio.

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9 KATHRYN BUNDY
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Case No. 2:08-CV-01252-WBS-EFB

DECLARATION OF KATHRYN BUNDY IN SUPPORT OF
OPPOSITION MOTION TO DISMISS OR TRANSFER VENUE

EXHIBIT A

Home Parenteral Nutrition Patient Orientation

(888) - 684 - 7483
(888) - N THRIVE



NutriThrive
Improving Life on Nutrition Support

10828 Kenwood Road
Cincinnati, OH 45242
NutriThrive.com



Deborah Pfister,
M.S., R.D., C.N.S.D.
Director of Nutrition Services

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Mary Jacobs
% SNF 357
South Fairfax Ave. #446
Los Angeles, CA 90036

Dear Mary,

Thank you for your inquiry about NutriThrive and the care we provide. I have enclosed our informational folder as well as an overview sheet that describes our services. Our mission is to optimize the nutritional well-being through our customized approach, caring for *each* NutriThrive consumer's individual needs.

I have also enclosed our Patient Orientation Guide which is given to all new Home Parenteral Nutrition (HPN) patients. It includes an introduction to intravenous nutrition and information specific to the supplies and equipment that have been ordered. Our Nutrition Liaison will customize this booklet for your client.

In addition to our clinical team, NutriThrive also has two Nutrition Consumer Advocates who are either on parenteral nutrition themselves or, have family members who are on HPN. Our Advocates act as liaisons between our consumers and NutriThrive, to orient new patients and families to home nutrition therapy and to ensure that they receive excellent service. Please let me know if you would like to speak to either of these knowledgeable resources.

Thanks again for your interest in NutriThrive. As NutriThrive's program creator and manager, I am proud to offer an innovative and consumer friendly approach to home parenteral nutrition. Please feel free to contact me should you need additional information.

Regards,

A handwritten signature in black ink that reads 'Deborah Pfister'. The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Deborah Pfister, M.S., R.D., C.N.S.D.
Director of Nutrition Services
(978) 501-0801
dpfister@nutrithrive.com

Some FAQ's About Home Parenteral Nutrition Therapy

Who Pays for my Supplies?

NutriThrive is contracted with several insurance carriers. We will verify your insurance benefits and notify you of coverage, lack of coverage, or if you have any kind of co-pay. This will be done before supplies are sent to your home. We will also notify your referring healthcare practitioner so that alternate arrangements can be made if there is a lack of coverage or more of a co-pay than is financially feasible for you.

How do you know what supplies to send me? How will I receive them?

NutriThrive will work with your referring healthcare practitioner to obtain the necessary prescriptions needed for your supplies. We will ship your supplies to you either by courier, UPS or Fed-Ex. See our *"Supply Management"* section for more detail.

Who will show me how to use the equipment?

Sometimes teaching on care of your intravenous line is initiated by your healthcare practitioner, but you will require more instruction, especially since you are going to be using an infusion pump. NutriThrive will work with your healthcare practitioner to make arrangements for a member of our team to initiate teaching with you prior to you beginning your Home Parenteral Nutrition (HPN). Teaching will continue in the home by one of our staff or a home care nurse until you are comfortable administering the HPN on your own. You will continue to have periodic nursing visits to help maintain your intravenous line and perform any prescribed lab work and monitoring.

What if I am not satisfied with NutriThrive's services?

NutriThrive is committed to your satisfaction. We will periodically be sending you patient satisfaction surveys to ask you what you think of our services and what we can do better. Your answers on these surveys help us to improve our services. However, if at any time you are not satisfied, call our office immediately. The process for filing a complaint is listed in the main booklet under the *"Patient Rights and Responsibilities Section"*.

Supply Management

Your PN (Parenteral Nutrition) and associated supplies will be sent to you approximately once per week. The PN and additives, such as multivitamins, will need to be refrigerated. The rest of your supplies should be kept in a clean, dry space, away from children, pets and extremes of temperature. The following guidelines and suggestions will prepare you for safe storage of your PN and supplies.

- It is ideal if you can keep your PN and additives in its own small refrigerator at 40-45°F or 4-7°C.
- If the PN will be stored in your main refrigerator, ensure consistency of the temperature by minimizing frequent opening and closing of the refrigerator door.
- Designate a special place in the refrigerator for your PN, such as the lower shelf or fruit/vegetable bin.
- Be sure to clean this part of the refrigerator with a 1:10 bleach solution or rubbing alcohol before storing your PN and monthly thereafter.
- Check the dates on your PN bags, make sure you use the previously delivered PN bags before using one from a new delivery.
- **KEEP ORGANIZED!!** The amount of supplies you receive weekly may seem overwhelming. Keeping them organized will make the job of PN administration less stressful.
- Many patients find it helpful to have a designated cabinet with individually labeled plastic bins for each item.
- Alternatively, some patients purchase a rolling plastic bin with drawers to keep their supplies.
- Others will make 7 days worth of "kits" containing all the supplies needed for each day's PN infusion.
- Even though you do not want to have an excess of supplies it is always a good idea to have 2-3 days (or more) worth of extra supplies in case of an emergency.

Our pharmacists and customer service personnel will assist in determining the easiest and most efficient way for you to place your weekly supply order, whether it is by phone or by email. There is a list of your specific supplies ("Cardex") in this binder which you can use as a reference and a tool in managing your inventory. Making sure you are not under or overstocked with supplies is one of our priorities. If you have any questions or concerns about your supplies or inventory management, please don't hesitate to call us at 1-888-NTHRIVE.

ALSO.....

- *Always check your supplies at the time of delivery. If there is a problem with your delivery (i.e. wrong/missing supplies, damaged packaging, or anything unusual) call your Customer Service Representative immediately.*

- *If you are planning on traveling, please call us two to four weeks in advance so that we may help you make the appropriate arrangements for delivery of your feeding supplies.*

| | | |
|--|--|--------------------|
| Pt Name: | Method of Shipment: Date: | |
| Product | Approx. Weekly Use/Initial Delivery | Qty. Needed |
| TPN 3-in-1 | 7 | |
| CADD Prizm Pump x2 (one for back up) | 2 | |
| CADD Rechargeable battery pack (21-3801) | 1 | |
| CADD 3 liter carry pack (T-1000) | 1 | |
| CADD Tubing (217381) | 8 | |
| 9V Batteries | 8 | |
| Sharps Pitch It Sr IV Pole | 1 | |
| | | |
| | | |
| 5 ml NS Flush | 21 | |
| 5ml Heparin(100u/ml) | 14 | |
| | | |
| | | |
| Central Line Dressing Kit MSDC-9000LF | 2 | |
| MaxPlus caps | 4 | |
| Alcohol Wipes (200/box) | 1 | |
| Sharps Disposal (large) | 1 | |
| Non sterile gloves(box) (M) | 1 | |
| | | |
| 1" Transpore plastic tape | 1 | |
| | | |

| | | |
|--------------------------------|--------|--|
| Additives: | 1 | |
| INFUVITE 1 vial/ 2x 5 ml vials | 7 | |
| Regular Insulin (5 units/day) | 1 vial | |
| Famotidine 20 mg (10 mg/ml) | 7 | |
| Syringe 10ml 21g 1 (BD 309642) | 7 | |
| Syringe 3ml 20g 1 (BD 309578) | 7 | |
| Syringe Insulin ½ ml | 7 | |